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Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the United Nations Ombudsman and Mediation Services

Seventh report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2012-2013

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the administration of justice at the United Nations (A/66/275 and Corr.1) and on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/66/224). The Advisory Committee also had before it the report of the Internal Justice Council on the implementation of the system of administration of justice (A/66/158). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

II. Administration of justice at the United Nations

2. The report of the Secretary-General on the administration of justice at the United Nations (A/66/275) outlines the activities of the system during the reporting period from 1 July 2010 to 31 May 2011. In the opening summary, the Secretary-General states that the processing of cases through all phases of the formal system continues to demonstrate a marked improvement in efficiency. He indicates, however, that the related workload has placed strains on the financial and human resources of the offices and units involved. It is stated that there is thus a need for significant strengthening in a number of areas in order to maintain the current pace of output, and additional resources are proposed for that purpose. A total of 26 new

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posts are requested and, overall, additional resources of $8,657,900 (before recosting) are sought under the proposed programme budget for the biennium 2012-2013. The report also contains information and data on the functioning of the new system as requested by the General Assembly in its resolution 65/251. In addition, noting that in the same resolution the Assembly decided to defer until its sixty-sixth session a review of the statutes of the Tribunals, the Secretary-General raises a number of issues for consideration by the General Assembly to assist in that review.

General observations and recommendations

3. The Advisory Committee recalls that the General Assembly, in its resolution 65/251, reaffirmed its decision to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff alike. Furthermore, the Assembly acknowledged the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation. In the same resolution, the Assembly also stressed that all elements of the new system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the Assembly.

4. **The Advisory Committee recognizes that the new system of administration of justice is still evolving and that many aspects have yet to settle into place. However, while some benefits of the new system, notably the more timely disposition of cases, are apparent, the Committee has concerns with regard to aspects of its implementation and impact to date. The Committee is of the view that caution is required to ensure that the system of administration of justice remains within the parameters set out by the General Assembly and operates in a manner which meets the best interest of the Organization.**

5. **In this regard, the Advisory Committee stresses the importance of ensuring that a culture of litigation does not develop further in the Organization. The Committee is of the view that achieving this will require, in part, that the informal resolution of disputes be more actively encouraged and pursued. However, reducing litigation also requires that the root causes underlying the level of recourse to the internal justice system are identified and addressed and that good management practices are enforced throughout the Organization. While recognizing that the jurisprudence under the new system is still evolving, the Committee is of the view that the number of judgements in favour of staff to date could be seen as being reflective, at least in part, of managerial weaknesses. These must be addressed as matter of priority, which will also require that individuals be held accountable for their managerial actions.**

6. **While noting that the new system is still evolving, the Advisory Committee sees merit in the undertaking of a comprehensive assessment of the evolution and functioning of the new system of administration of justice as soon as practicable to determine whether it is functioning both in the best interest of the United Nations and in accordance with its governing principles as laid down in paragraph 4 of resolution 61/261.**

Representation of the Secretary-General as respondent

7. The Advisory Committee notes that the Secretary-General is represented in his role as respondent before the Dispute Tribunal with respect to cases filed by staff across the global Secretariat by the Administrative Law Section, Office of Human Resources Management, while he is represented before the Appeals Tribunal by staff of the General Legal Division, Office of Legal Affairs. **The Advisory Committee is of the view that the Secretary-General should consider having one office, the Office of Legal Affairs, be responsible for representation at both Tribunals, which should lead to more coherent representation and efficient use of resources.**

Format of reports on the administration of justice at the United Nations

8. The report of the Secretary-General provides information on the caseload of the Dispute and Appeals Tribunals and the offices involved in the system of administration of justice for the period from 1 July to 31 May 2010. In order to facilitate a comparison of the workload with that pertaining during the first year of operation of the system, the Advisory Committee was provided, upon enquiry, with updated information for the year up to 30 June 2011, which is reflected in the present report. **The Advisory Committee requests that future reports on the administration of justice contain statistics covering a full calendar year in order to facilitate analysis of trends and workload over time. The Committee also remains of the view that the presentation of such information would be improved through greater use of tables and/or charts and requests that future reports provide statistical data in a more structured, descriptive and consistent form (see also A/65/557, para. 11).**

A. Review of the formal system of justice and related resource requests

1. Management Evaluation Unit

9. The activities of the Management Evaluation Unit, which is part of the Office of the Under-Secretary-General for Management, are outlined in paragraphs 5 to 25 of the report of the Secretary-General (A/66/275 and Corr.1). The Unit is responsible for carrying out a management evaluation of contested decisions, which constitutes the mandatory first step of the formal system of administration of justice. This process provides the Administration with the opportunity to confirm, correct or overturn decisions, where deemed necessary, as well as with an avenue to identify alternative solutions for the resolution of a dispute.

10. With regard to the workload and output of the Management Evaluation Unit, the Advisory Committee was provided, upon enquiry, with updated data for the period from 1 July 2010 to 30 June 2011, which is set out in table 1. The number of cases received, 466, reflects an increase compared with the 428 cases received during the first year of operation of the Unit (see A/65/557, table 2).

Table 1
Activities of the Management Evaluation Unit, 1 July 2010 to 30 June 2011

Cases brought forward as at 1 July 2010		56
Cases received		466
Cases closed		354
Evaluation letters issued	144	
Cases resolved informally[a]	107	
Cases not receivable	88	
Cases re-routed to correct receiving entity[b]	15	
Cases open as at 30 June 2011		**168**

[a] Resolution by the parties involved, referral to the Office of the Ombudsman and Mediation Services or withdrawal by the staff member.
[b] Funds, programmes and specialized agencies.

11. The Secretary-General indicates that approximately 36 per cent of cases received and closed by the Management Evaluation Unit during 2010 were settled through informal resolution efforts either by the Unit or the Office of the United Nations Ombudsman and Mediation Services or through bilateral discussions between the Administration and the staff members concerned. Furthermore, it is stated that in approximately 84 per cent of cases submitted that were not resolved informally, the contested decision was upheld by the Secretary-General following a determination by the Unit that the decision had been consistent with the Organization's rules and jurisprudence (A/66/275, paras. 7 and 8).

12. The Advisory Committee was informed that a mechanism to determine the number of staff who seek recourse to the Dispute Tribunal after a contested administrative decision is upheld by the Management Evaluation Unit is now in place. In this regard, the Committee was informed that of the 250 cases on which a substantive management evaluation had been provided, 150 cases (60 per cent) were subsequently submitted to the Dispute Tribunal, while in the remaining 100 cases (40 per cent), the staff members concerned did not file with the Dispute Tribunal.

13. The Secretary-General further indicates that, as at 31 December 2010, in 83 per cent of cases reviewed by the Dispute Tribunal following management evaluation, the Tribunal's disposition of the case was the same as that recommended by the Management Evaluation Unit. The Secretary-General posits that this can be construed as being indicative of the impartiality, objectivity and accuracy of the Unit (ibid., para. 12). The Advisory Committee was provided, upon enquiry, with updated information indicating that between 1 July 2009 and 30 June 2011, the Tribunal's disposition was the same as that recommended by the Unit in 87 per cent of cases in which the management evaluation carried out by the Unit had upheld the administrative decision in question.

14. **The Advisory Committee considers that by providing management with the opportunity to review and, where necessary, remedy faulty administrative decisions, the management evaluation function plays an important role in avoiding unnecessary recourse to litigation. The Committee notes with satisfaction that, of the receivable cases submitted to the Management Evaluation Unit, the majority either were resolved informally or were not**

subsequently submitted to the Dispute Tribunal following the issuance of a management evaluation letter. With regard to those cases reviewed by the Unit that were pursued further through the formal process, the Committee notes the very high proportion of recommendations which were subsequently concurred with by the Dispute Tribunal. The Committee considers these statistics to be indicative of the effectiveness of the Management Evaluation Unit and encourages the Secretary-General to make continued efforts, where appropriate, to facilitate the settlement of cases at that stage of the process.

15. The Secretary-General states that current staffing of the Management Evaluation Unit is insufficient to enable the unit to effectively meet its mandate, given the number of cases being submitted. Therefore, one additional Legal Officer (P-3) is requested (ibid., paras. 19-25). **Given that the ongoing workload under the new system of administration of justice remains uncertain, the Advisory Committee recommends approval of an additional Legal Officer (P-3) position under general temporary assistance for the Management Evaluation Unit.**

2. United Nations Dispute Tribunal

16. Information on the composition and functioning of the United Nations Dispute Tribunal is provided in paragraphs 26 to 60 of the report of the Secretary-General (A/66/275). Upon enquiry, the Advisory Committee was provided with updated data for the period from 1 July 2010 to 30 June 2011 which enables comparison with information on the first year of operation of the Tribunal (see table 2).

Table 2
Activities of the United Nations Dispute Tribunal, 1 July 2009 to 30 June 2011

	Total	*Geneva*	*Nairobi*	*New York*
1 July 2009-30 June 2010				
Cases transferred from joint disciplinary committees/joint appeals boards	**169**	61	55	53
Cases transferred from the United Nations Administrative Tribunal	**143**	51	40	52
New applications received	**200**	87	38	75
Cases received as at 30 June 2010	**512**	199	133	180
Cases disposed of as at 30 June 2010	**222**	115	44	63
Cases pending as at 30 June 2010	**290**	84	89	117
1 July 2010-30 June 2011				
New applications received	**201**	64	56	81
Cases disposed of	**244**	98	59	87
Total cases received	**713**	**263**	**189**	**261**
Total cases disposed of	**466**	**213**	**103**	**150**
Total cases pending as at 30 June 2011	**247**	**50**	**86**	**111**

17. With regard to the subject matter of the cases received by the Dispute Tribunal, the Committee was provided, upon enquiry, with information on the 201

cases received during the period from 1 July 2010 to 30 June 2011, as follows: (a) appointment-related matters (70 cases, 35 per cent); (b) disciplinary matters (33 cases, 16 per cent); (c) separation from service (41 cases, 20 per cent); (d) benefits and entitlements (19 cases, 10 per cent); (e) classification (2 cases, 1 per cent); and (f) other (36 cases, 18 per cent).

18. The Secretary-General highlights the heavy volume of cases before the Dispute Tribunal and states that, while the additional capacity provided by three additional ad litem judges has allowed the Tribunal to make significant progress in addressing the backlog of cases inherited from the old system, a new backlog would emerge should the judicial capacity be reduced with the elimination of their positions at the end of 2011. The Secretary-General states that it is essential that there be two full-time judges at each Dispute Tribunal location, and thus recommends that the General Assembly appoint a second full-time judge in each location. In addition, three P-3 Legal Officers (1 each in Geneva, Nairobi and New York) and three Legal Assistants (1 General Service (Other level) in New York and Geneva and 1 General Service (Local level) in Nairobi) are requested to support these three judges (ibid., paras. 39-43).

19. The Advisory Committee notes that during the year ended 30 June 2011, 201 new cases were received by the Tribunal, a similar caseload to that of its first year of operation, when 200 cases were received. At the end of the period, 247 cases were pending, a reduction compared with the 290 cases pending as at 30 June 2010. **The Advisory Committee concurs with the position of the Secretary-General that after two years, the Dispute Tribunal is still in its "start-up" phase. The Committee therefore remains of the view that it is too early to assess what the ongoing caseload and output of the Dispute Tribunal will be once the system has stabilized. Accordingly, the Committee does not recommend the approval of three new full-time judges.**

20. **While factors such as a more settled jurisprudence may, in due course, reduce the workload of the Dispute Tribunal, it appears unlikely that any significant reduction will be seen in the near future. The Advisory Committee therefore recommends that the three ad litem judges be extended for a further period of two years. The Committee is of the view that an extension for such a period would ensure continuity and provide the capacity necessary to deal with both the ongoing workload and pending cases. The Committee is of the view that, in the determination of the judicial capacity necessary at the end of that period, further consideration should be given to the recommendation of the Internal Justice Council with regard to the use of part-time judges, given that this, too, would provide an efficient and flexible alternative arrangement (A/66/158, para. 12).**

21. **The Advisory Committee recommends the approval, under general temporary assistance, of three P-3 Legal Officer, two General Service (Other level) and one General Service (Local level) positions to support the ad litem judges for the same two-year period.**

22. The Secretary-General also proposes the reclassification of the existing P-2-level Legal Officer post in the Registry of the Dispute Tribunal in New York as a P-3 post. The reason given for this is that it would rectify an anomaly in the staffing of the registries, as those in Nairobi and Geneva are staffed with a Registrar (P-5) and Legal Officers at the P-4 and P-3 levels (A/66/275, para. 44). **The Advisory**

Committee has no objection to the proposal of the Secretary-General that the P-2 Legal Officer post in New York be reclassified as a P-3 post.

23. With regard to non-post resources, an additional $25,000 is sought for communications to cover the costs of videoconferencing and to permit the recording of oral hearings (ibid., para. 49). An additional $155,000 is requested under travel to facilitate the attendance of witnesses at the Tribunal when required, for plenary meetings of the Dispute Tribunal judges and registrars and to attend legal symposiums (ibid., paras. 50 and 51). The Advisory Committee was informed, upon enquiry, that the cost of holding a plenary meeting for the Dispute Tribunal would vary between $50,000 and $70,000 annually, depending on location. **In addition to the non-post resources requested for the Office of Administration of Justice in the context of the proposed programme budget for the biennium 2012-2013 (A/66/6 (Sect. 1)), the Advisory Committee recommends the approval of an additional $130,000 under travel and the additional $25,000 proposed under communications.**

Mechanism for addressing complaints against judges

24. The Secretary-General highlights the current lack of a mechanism for handling complaints against judges of the Tribunals (A/66/275, paras. 52-60). He suggests that pending its decision on a permanent mechanism, the General Assembly may wish, as an interim measure, to authorize the Internal Justice Council to investigate complaints against judges (ibid., para. 54). With regard to a possible permanent mechanism, the Secretary-General proposes two options. Under the first, allegations of misconduct or incapacity of a judge would be first investigated by the President of the Tribunal in question, or, if made against the President, by the most senior of the other judges in the Dispute Tribunal or the Vice-President of the Appeals Tribunal, as appropriate. Under the second option, responsibility for such investigations would be given to the Internal Justice Council (ibid., paras. 56-60).

25. The Advisory Committee notes that the Internal Justice Council has expressed the view that complaints against judges should be investigated by an independent institution and has suggested that it would be an appropriate institution to do so (A/66/158, para. 7). **The Advisory Committee notes the options proposed by the Secretary-General and shares the position of the Internal Justice Council that the absence of a mechanism to investigate complaints against judges is a matter requiring urgent attention.**

3. United Nations Appeals Tribunal

26. Information on the composition and functioning of the United Nations Appeals Tribunal is provided in paragraphs 61 to 78 of the report of the Secretary-General (A/66/275 and Corr.1). The Advisory Committee was provided, upon enquiry, with updated statistics for the period from 1 July 2010 to 30 June 2011, which are set out in table 3.

Table 3
Activities of the United Nations Appeals Tribunal for the period from 1 July 2009 to 30 June 2011

Cases received	
1 July 2009 to 30 June 2010	110
1 July 2010 to 30 June 2011	118
Total cases received	**228**
Cases disposed of	
1 July 2009 to 30 June 2010	33
1 July 2010 to 30 June 2011	99
Total cases disposed of	**132**
Cases pending as at 30 June 2011	**96**

27. The current staffing of the Appeals Tribunal Registry consists of two Professional staff (P-5 and P-3) and three General Service staff, including one funded under general temporary assistance. The Secretary-General states that this staffing is insufficient to allow it to process cases in a timely manner and could lead to the eventual accumulation of a backlog. Therefore, an additional P-4 Legal Officer is sought. The Officer would provide substantive legal support to the judges, which, the Secretary-General states, would increase efficiency and responsiveness on the part of the Registry (ibid., para. 75). In the context of this request, the Secretary-General recommends that the General Service (Other level) position approved by the General Assembly for the Appeals Tribunal for one year in resolution 65/251 be discontinued (ibid., paras. 71-76).

28. The Advisory Committee recalls that the General Assembly, in paragraph 48 of its resolution 65/251, noted with regret that the current staffing levels of the Registry had led to difficulties in supporting the judges in a manner which enabled them to carry out their work effectively and efficiently. **The Advisory Committee is of the view that the provision of a third legal officer to support the Tribunal has merit, and recommends approval of the proposal of the Secretary-General.**

29. With regard to non-post resources, the Secretary-General notes that it is envisaged that the caseload of the Tribunal would justify three sessions annually, whereas the current budget for travel is insufficient to accommodate a third session. An additional $230,000 in travel funds is therefore sought for this purpose (ibid., para. 77). The Advisory Committee was informed that since July 2010, the Appeals Tribunal had held three sessions (October 2010, February/March 2011 and June/July 2011) and that funding for those sessions had been provided through the reprioritization of existing resources. The Committee notes that in the proposed programme budget for the biennium 2012-2013 (A/66/6 (Sect.1)), a total of $381,200 is requested to fund, inter alia, two sessions of the Appeals Tribunal annually. **Given the level of funding requested in the proposed programme budget, the Advisory Committee recommends approval of an additional $100,000 in travel funds. The Committee expects that efforts would be made, if necessary, to meet additional requirements through the further reprioritization of resources and activities.**

30. With respect to the entitlements of the judges, the Secretary-General recalls the proposal in his previous report (A/65/373 and Corr.1, paras. 161-164) that travel entitlements similar to those accorded to the judges of the former United Nations Administrative Tribunal be extended to the judges of the Appeals Tribunal (A/66/275, para. 78). Noting that the General Assembly decided in its resolution 65/251 to revert to the issue in the context of the 2012-2013 budget, the Secretary-General reiterates his recommendation and requests that the travel budget of the Office of Administration of Justice be increased by $50,200 to reflect the increased entitlements. The Advisory Committee's position on the travel entitlements of the judges of the Appeals Tribunal was outlined in paragraph 51 of its previous report on the administration of justice (A/65/557).

4. Office of Staff Legal Assistance

31. Information on the functioning of the Office of Staff Legal Assistance is provided in paragraphs 79 to 92 of the report of the Secretary-General (A/66/275). Upon enquiry, the Advisory Committee was provided with updated statistics relating to the activities of the Office for the period to 30 June 2011, which is reflected in table 4.

Table 4
Activities of the Office of Staff Legal Assistance for the period from 1 July 2009 to 30 June 2011

1 July 2009 to 30 June 2010	
Cases transferred from Panel of Counsel	346
New cases received	592
Cases closed or resolved	510
Cases open as at 30 June 2010	**428**
1 July 2010 to 30 June 2011	
New cases received	506
Cases closed or resolved	352
Cases open as at 30 June 2011	**582**

32. The Secretary-General states that the Office of Staff Legal Assistance provides many forms of legal assistance to staff, ranging from legal advice to the representation of staff members before the Tribunals. Upon enquiry, the Advisory Committee was informed that in respect of the 201 cases before the Dispute Tribunal during the period from 1 July 2010 to 30 June 2011, the Office of Staff Legal Assistance represented the applicants in 63 cases (31 per cent), while applicants represented themselves in 87 cases (43 per cent) and were represented by private counsel in 34 cases (17 per cent), and that in 17 cases (9 per cent), representation was provided by former or current staff. During the same period, the Office of Staff Legal Assistance represented applicants in 35 cases before the Appeals Tribunal.

33. The Advisory Committee notes that in carrying out their work, the staff of the Office are assisted by volunteer counsel, legal interns and external pro bono

counsel. The Secretary-General indicates, however, that it is difficult to identify such qualified assistance in offices away from Headquarters. With respect to the development of incentives to enable and encourage staff to participate in the work of the Office, the Secretary-General states that differences of opinion remain between staff representatives and management on the approach to be taken and that consultations on this issue continue.

34. The Secretary-General states that the present staffing of the Office of Staff Legal Assistance must be strengthened in order for it to fulfil its mandate. To that end, two additional P-4 posts, to be located in Nairobi and New York, are requested. In addition, two new General Service (Other level) posts are requested to provide administrative support in Geneva and Nairobi (ibid., paras. 87 and 88). The Secretary-General also requests a continuation for a further year, through end December 2012, of the P-3 position in Nairobi currently funded under general temporary assistance from the peacekeeping support account (ibid., para. 89).

35. The Advisory Committee recalls that in deciding to establish a new system of administration of justice in its resolution 61/261, the General Assembly agreed that legal assistance for staff should continue to be provided, and the Assembly supported the strengthening of an office of staff legal assistance. Subsequently, when establishing the Office of Staff Legal Assistance by its resolution 62/228, the Assembly reiterated its request to staff representatives to further explore the possibility of establishing a staff-funded scheme that would provide legal advice and support to staff. In the same resolution, the Secretary-General was requested to develop incentives to encourage and enable staff to continue to participate in the work of the Office of Staff Legal Assistance.

36. The Advisory Committee notes that, to date, no agreement has been reached on incentives for staff to participate in the work of the Office of Staff Legal Assistance. With regard to a staff-funded mechanism to support the work of the Office, the Committee further notes that at the Staff-Management Coordination Committee meeting held in June 2011, staff indicated that none of the options outlined in annex I to the report of the Secretary-General was acceptable and reiterated their view that the cost of representation rested with the employer (ibid., para 189).

37. **The Advisory Committee continues to hold the view that the provision of legal assistance to staff should be complemented by some form of participation and financial contribution by staff, which, it considers, would ensure that staff have a stake in the process and could discourage unnecessary recourse to litigation (see also A/63/545, para. 33). The Committee considers that a contribution from staff towards the provision of legal assistance and support to staff is an integral element of the new system of administration of justice, and regrets that progress has not been made in that regard. The Committee is of the view that the absence of such a contribution towards the activities of the Office of Staff Legal Assistance may be one of the factors leading to the increase in litigation which has followed the establishment of the new system of administration of justice.**

38. The Advisory Committee recalls paragraph 56 of resolution 65/251, in which the General Assembly decided to revert at its sixty-sixth session to the mandate and functioning of the Office of Staff Legal Assistance, including the participation of current and former staff as volunteers. **The Advisory Committee considers that it is important that this lacuna be addressed. In this regard, the Committee**

continues to support the provision of legal advice and guidance to staff in the processing of their claims through the formal system of administration of justice. The Committee is of the view, however, that the role of the Office of Staff Legal Assistance should be limited to the provision of such advice and guidance and should not extend to the formal representation of staff before the Tribunals. The Committee considers that such representation is more appropriately arranged by staff themselves, whether through a staff-funded scheme, staff unions or associations or any other mechanism that staff themselves see fit to use.

39. **The Advisory Committee remains of the view that decisions on the staffing requirements of the Office of Staff Legal Assistance must take into account the outcome of the General Assembly's deliberations on the mandate and scope of functions of the Office. The Committee further considers that decisions on the mandate and scope of functions of the Office, including the type of services provided to staff, should take into account the willingness of staff to support the activities of the Office. Pending decisions on a staff-funded mechanism to support the provision of legal assistance and support to staff and on the mandate and scope of functions of the Office of Staff Legal Assistance, the Committee does not recommend approval of new posts for the Office (see also para. 71 below).**

40. **The Advisory Committee has no objection to a continuation of the P-3 position in Nairobi funded under the support account for peacekeeping operations. The Committee recommends approval of the position for the period from 1 January to 30 June 2012. Should there be a continued need for the position beyond that point, a proposal should be included in the proposed budget for the support account for peacekeeping operations for the period from 1 July 2012 to 30 June 2013. This would align any further consideration of this position with the normal budget cycle of the support account.**

41. With regard to non-post resources, additional funds are sought under communications ($11,200) and travel ($15,000) (comprising travel to visit duty stations and travel of legal officers of the Office in Addis Ababa and Beirut to attend hearings of the Dispute Tribunal), as well as for office supplies and materials ($9,000) (A/66/275, paras. 90-92). **The Advisory Committee recommends approval of the proposal of the Secretary-General, with the exception of the additional requirements for travel of $15,000. The Committee is of the view that priority requirements for travel can be met from within the overall travel budget of the Office of Administration of Justice.**

5. Office of the Executive Director

42. Information on the Office of the Executive Director is outlined in paragraphs 93 to 108 of the report of the Secretary-General (A/66/275). The Office is the focal point for organizing all of the technical, budgetary and logistical aspects of the substantive units within the Office of Administration of Justice and also provides support to the Internal Justice Council. The Secretary-General highlights the launch, during the reporting period, of the web-based electronic case management system, allowing staff members to file and monitor their cases electronically. It is also indicated that the Office has negotiated agreements with all of the entities that had

access to the United Nations Administrative Tribunal in the prior system, giving them access to the Appeals Tribunal.[1]

43. The Secretary-General recalls that the General Assembly, in its resolution 65/251, requested that he submit proposals on the appropriate level for the post of Executive Director of the Office of Administration of Justice. The Secretary-General states, however, that he considers that the issue should not be viewed in isolation from the issue of the level of judges of the Dispute and Appeals Tribunals and their remuneration. **The Secretary-General is therefore recommending that the General Assembly request that the Internal Justice Council examine the issue of the level of remuneration and remuneration mechanisms with respect to the judges and report thereon to the Assembly at its sixty-seventh session, at which point the Assembly could also consider the matter in conjunction with the issue of the level of the post of Executive Director** (ibid., para. 102).

44. With regard to non-post resources, additional funding is requested in a number of areas. Under general temporary assistance, an additional $130,000 is sought (ibid., para. 106), for remuneration of the external members of the Internal Justice Council ($120,000) and maternity or sick leave replacements or for temporary staff during periods of peak workload ($10,000). The Advisory Committee was informed, upon enquiry, that although funding had been provided in the biennium 2008-2009 for the remuneration of the external members of the Council, no provision was made in the budget for 2010-2011. Payments in the amount of $67,100 have, however, been made to those members during the current biennium to date. For the next biennium, funding of $120,000 is requested, based on 35 work days per annum for each of the three external members at a daily rate of $555. **The Advisory Committee recommends approval of an additional $10,000 under general temporary assistance. The Committee is of the view that the remuneration of the external members of the Internal Justice Council, as required, should continue to be met from within existing resources.**

45. With respect to travel, an additional $30,000 is sought to facilitate travel of the staff of the Office and of the Internal Justice Council (ibid., para. 107). The Advisory Committee notes that $113,700 in travel funds for the Office is requested for the proposed programme budget for 2012-2013. **The Committee does not recommend approval of the additional funding requested.**

46. An additional $75,000 is sought under contractual services and acquisition of software to cover the licence, maintenance and upgrade costs of the website and electronic case management system (ibid., para. 108). **The Committee recommends approval of the additional funding requested under contractual services and acquisition of software.**

6. Administrative Law Section, Office of Human Resources Management

47. The activities of the Administrative Law Section are outlined in paragraphs 115 to 135 of the report of the Secretary-General (A/66/275). The Section, which consists of an Appeals Unit and a Disciplinary Unit, is responsible for representing

[1] The International Tribunal for the Law of the Sea, the United Nations Joint Staff Pension Fund, the International Civil Aviation Organization, the International Maritime Organization, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the International Seabed Authority and the International Court of Justice.

the Secretary-General in his role as respondent before the Dispute Tribunal with respect to cases filed by staff across the global Secretariat, as well as cases from staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. The Administrative Law Section also handles disciplinary matters referred to the Office of Human Resources Management relating to all Secretariat staff and staff of the International Tribunals and provides advice to managers on the justice system in general, as well as aspects of individual appeals and disciplinary cases.

48. The Secretary-General indicates that during the period from 1 July 2010 to 31 May 2011, the Section handled 318 appeals cases and 391 disciplinary matters, including 121 new cases (ibid., paras. 121 and 125). The Secretary-General also states that the new system of administration of justice has placed substantial additional demands on the Section, as the procedures for both the appeals and disciplinary work are now considerably more complex and demanding. In particular, the shift from document-based proceedings under the old formal system to oral hearings and the demand for numerous written submissions under the new system is highlighted as a major contributing factor (ibid., para 128).

49. Currently, the Appeals Unit of the Administrative Law Section has an authorized strength of eight posts (1 P-5 and 1 General Service (Other level) funded from the regular budget and 3 P-4, 2 P-3 and 1 General Service (Other level) funded by the support account for peacekeeping operations). On the basis of the current and projected workload, of which approximately 65 per cent is stated as being from non-peacekeeping offices, two additional posts (1 P-4 and 1 P-3) are requested (ibid., paras 131-133). The Disciplinary Unit is currently staffed by six posts: two regular budget posts (1 P-5 and 1 P-4) and four support account posts (1 P-3, 1 P-2 and 2 General Service (Other level)). On the basis of a projected workload of 150 disciplinary cases this year, of which approximately 40 per cent are expected to be non-peacekeeping-related, three new posts (1 P-4 and 2 P-3) are requested (ibid., paras. 133 and 134). **The Advisory Committee remains of the view that it is too early to assess what the ongoing workload will be in the offices involved in the new system of administration of justice. However, the Committee recognizes the increased workload of the Administrative Law Section and recommends approval of two new P-3 posts, one for the Appeals Unit and one for the Disciplinary Unit. In addition, the Committee recommends approval of one P-3 position to be funded under general temporary assistance for the biennium 2012-2013 and utilized to meet priority requirements of the Section.**

7. Offices away from Headquarters and regional commissions

50. Information on activities with regard to the system of administration of justice relating to offices away from Headquarters and regional commissions is outlined in paragraphs 136 to 156 of the report of the Secretary-General (A/66/275). In order to more effectively address the current workload, a number of new posts are requested, as follows:

(a) Two additional posts (1 P-4 Legal Officer and 1 General Service (Other level) Legal Assistant) are requested for the United Nations Office at Geneva (ibid., paras. 139-143). The Legal Officer would also provide services to the United Nations Office at Vienna/United Nations Office on Drugs and Crime and the Economic Commission for Europe;

(b) Two additional posts (1 P-4 Legal Officer and 1 General Service (Other level) Legal Assistant) are sought for the United Nations Office at Nairobi. These posts would also serve the Economic Commission for Africa (ibid., paras. 144-146);

(c) Two new posts (1 P-4 Human Resources Policy Officer and 1 General Service (Other level)) are requested for the Economic and Social Commission for Asia and the Pacific (ibid., paras. 148-150). The Officer would also support the Economic and Social Commission for Western Asia.

51. **The Advisory Committee recognizes the need for dedicated resources to support the handling of appeals and disciplinary cases at offices away from Headquarters and in the regional commissions and to assist in litigation matters at the Dispute Tribunal locations in Geneva and Nairobi. The Committee recommends approval of two Legal Officer positions (P-4) and two Legal Assistant positions (General Service (Other level)) to be funded under general temporary assistance for the biennium 2012-2013 in the United Nations Offices at Nairobi and Geneva.** The Committee was informed, upon enquiry, that during 2009 and 2010, a total of 14 appeals or disciplinary matters arose from the Economic and Social Commission for Asia and the Pacific and the Economic and Social Commission for Western Asia combined. **The Committee recommends approval of one Human Resources Policy Officer (P-4) position to be funded under general temporary assistance at the Economic and Social Commission for Asia and the Pacific for the biennium 2012-2013. Given the present workload, the Committee does not recommend approval of the General Service level post at the Commission.**

52. With regard to non-post resources, additional travel funds ($30,000) are sought for outreach activities to the regional missions and to the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia to help maintain consistent standards across the Organization and to address systemic issues (ibid., paras. 153-155). In addition, further travel funds ($30,000) are requested for the travel of legal officers representing the Secretary-General when the Dispute Tribunal conducts hearings in missions or other duty stations (ibid., para. 156). **The Advisory Committee has no objection to the proposal of the Secretary-General for additional travel funds.**

8. Office of Legal Affairs

53. As outlined in paragraphs 172 to 186 of the report of the Secretary-General (A/66/275), the Office of Legal Affairs provides legal advice to the Secretary-General, Secretariat departments and offices and other United Nations organs. With regard to the system of administration of justice, the General Legal Division provides advice during the early stages of claims advanced by staff members and to the entity representing the Secretary-General at the first level of the judicial process. The General Legal Division also represents the Secretary-General before the Appeals Tribunal, which encompasses both filing appeals against judgements of the Tribunal and responding to appeals filed by staff members.

54. The Secretary-General indicates that the responsibilities of the General Legal Division in connection with the new system of administration of justice have greatly exceeded expectations (ibid., para. 177). The Secretary-General states, for example, that whereas the Division filed an average of 63 submissions with the former United

Nations Administrative Tribunal annually, it filed 150 with the Appeals Tribunal in 2010 (ibid., para. 180).

55. The Secretary-General states that, presently, the General Legal Division has three regular budget posts dedicated to administration of justice and management issues (1 P-5, 1 P-3 and 1 General Service (Other level)). In addition, the Division has one P-4 post and two general temporary assistance positions (1 P-4 and 1 P-3) funded under the support account for peacekeeping operations. Noting that the Office of Legal Affairs had not been allocated any new posts since the establishment of the new system, the Secretary-General requests approval for three new posts (2 P-4 and 1 P-3) (ibid., para. 186). **In view of the increased workload in the Office of Legal Affairs under the new system of administration of justice and noting that no additional capacity has, to date, been authorized for the Office since the establishment of the new system, the Advisory Committee recommends approval of the proposal of the Secretary-General for three additional Legal Officer posts (2 P-4 and 1-P-3).**

9. Recommendations and conclusions

56. The actions to be taken by the General Assembly in connection with the report of the Secretary-General on the administration of justice at the United Nations (A/66/275) are indicated in paragraph 298 of the report.

57. With regard to the programme budget for the biennium 2012-2013, the Secretary-General requests the General Assembly to approve the establishment of 26 new posts (10 P-4, 8 P-3, 4 General Service (Other level)) and 4 General Service (Local level) effective 1 January 2012 and the reclassification of one post from the P-2 to the P-3 level effective the same date. The Assembly is requested to appropriate a total amount of $8,657,900 (before recosting), with the provision representing a charge against the contingency fund. In this regard, the Advisory Committee notes that this is one of several proposals being made by the Secretary-General requesting a charge against the contingency fund since the submission of his proposed programme budget for the biennium 2012-2013 (A/66/6). A similar request is also made in respect of the Office of the United Nations Ombudsman and Mediation Services (see para. 113 below).

58. With regard to the budget for the support account for peacekeeping operations, approval is sought for the continuation of a P-3 position in Nairobi for one additional year effective 1 January 2012, with the costs to be reflected in the performance report for the period 1 July 2011 to 30 June 2012 and the budget proposals for the period from 1 July 2012 to 30 June 2013 respectively.

59. **The recommendations of the Advisory Committee with respect to the proposals of the Secretary-General on the administration of justice are contained in paragraphs 9 to 55 above. Subject to its conclusions and recommendations in the paragraphs above, the Advisory Committee recommends that the General Assembly:**

(a) **Approve the establishment of 6 new posts (3 P-4 and 3 P-3) under the proposed programme budget for the biennium 2012-2013, effective 1 January 2012 (see paras. 28, 49 and 55);**

(b) Approve the reclassification of one P-2 post to the P-3 level under the proposed programme budget for the biennium 2012-2013, effective 1 January 2012 (see para. 22);

(c) Approve the continuation of the P-3 position in Nairobi funded from the budget of the support account for peacekeeping operations for the period from 1 January to 30 June 2012 (see para. 40).

60. **With regard to non-post costs, the Advisory Committee has recommended, inter alia, approval of 13 general temporary assistance positions for the programme budget for the biennium 2012-2013 (see paras. 15, 21, 49 and 51). The provision under non-post costs should be adjusted to reflect the position of the Committee with respect to the proposals for new posts.**

61. **As outlined in paragraph 6 above, the Advisory Committee sees merit in a comprehensive assessment being undertaken of the evolution and functioning of the new system of administration of justice. The Committee's position on future resource requirements for the effective functioning of the internal justice system will take into account the results of such an assessment.**

B. Responses to questions relating to the administration of justice

62. Section III of the report of the Secretary-General responds to a number of queries set out by the General Assembly in its resolution 65/251.

1. Staff-funded mechanism to support the Office of Staff Legal Assistance

63. In response to paragraphs 40 and 41 of resolution 65/251, the Secretary-General outlines proposals for staff-funded mechanisms, including both voluntary and mandatory options, to support the Office of Staff Legal Assistance, as detailed in annex I to the report (A/66/275). The Secretary-General states that the General Assembly would continue to determine the staffing table of the Office of Staff Legal Assistance and that the posts in the Office created pursuant to resolution 63/253 would continue to be funded through the regular budget. The Secretary-General further states that the proposed staff-funded mechanisms would offset some of the enhancements to the Office's current staffing (ibid., annex I, para. 2).

64. Five possible models for staff-funded mechanisms are put forward, three of which are mandatory and two voluntary. The options are outlined in paragraphs 5 to 27 of annex I to the report of the Secretary-General and are summarized in brief below. The Secretary-General does not recommend a particular option, but recommends that the General Assembly take note of them and indicate which specific model, if any, it considers to be suitable to serve as a basis for a more detailed proposal to be developed and put forward (ibid., para. 31).

Universal mandatory model

65. Under a universal mandatory model, a fee would be assessed against each staff member, reflecting the various salary scales and grade levels of staff. Given the large staff population, the Secretary-General indicates that this scheme would have the benefit of providing a significant amount of funding for the office and even with *de minimus* individual contributions would provide a stable source of revenue. As an example of a possible fee level, the report of the Secretary-General refers to an

amount of 0.001 per cent of salary (ibid., para. 7). Upon enquiry, the Committee was informed that a contribution at that level would only raise approximately $65,000 from staff annually. The Committee notes, however, that a contribution of 0.01 per cent of salary, which would raise some $650,000 annually, would amount to a yearly contribution of approximately $15.72 for a P-5 level staff member and $4.56 for a General Service (Other level) staff member based in New York.

66. However, the Secretary-General highlights a number of possible shortcomings of such a scheme, including that it would mean that all staff would be paying for a service which is only utilized by a small percentage of individuals and that, once staff would be required to contribute to its costs, a decision by the Office of Staff Legal Assistance not to support a particular case could result in the Office being challenged. The Secretary-General further alludes to the possibility that a mandate to contribute to the funding of the Office may face legal challenges.

Mandatory assessment for users of the services of the Office of Staff Legal Assistance

67. A second mandatory option would require only those staff members who use the services of the Office of Staff Legal Assistance to make a financial contribution. The Secretary-General highlights a concern that, as with a universal mandatory model, staff members who have made a mandatory contribution could demand continued services, although the Secretary-General notes that this could be mitigated if the fee charged varied according to the services provided by the Office.

Mandatory assessment against dues collected by staff unions and organizations

68. The third mandatory option would require staff associations and unions to contribute a portion of the staff dues remitted to them to support the Office of Staff Legal Assistance. The Secretary-General states that this would be analogous to imposing a mandate that the staff unions and associations should provide some form of legal insurance for the staff they represent. The Secretary-General indicates, however, that a mandatory deduction from unions' financial resources would raise concerns similar to those regarding the imposition of a mandatory deduction on individual staff members' salaries. In addition, the Secretary-General states that such an approach may lead to complaints that the imposition of a levy may impede the ability of the unions and associations to provide basic services to their members.

Voluntary models

69. The Secretary-General highlights two possible models based on voluntary contributions. One would allow for the automatic deduction of a fixed percentage of a staff member's salary, while allowing staff members to opt out of the scheme. The second option would allow staff members to choose to contribute a fixed percentage of their salary to support the Office of Staff Legal Assistance. Both models would have the benefit that contributions would be based on the consent, or implied consent, of participating staff members. However, the amount that would be generated is difficult to estimate. The Secretary-General presents some possible incentives for encouraging staff members to participate in such a scheme, such as a system where only those contributing would have access to the full range of services available from the Office.

70. With regard to the mandatory options for funding, the Secretary-General notes that the Office of Staff Legal Assistance was established by the General Assembly

as part of the internal system of administration of justice. As such, the expenses associated with its operation constitute expenses of the Organization, which, pursuant to Article 17, paragraph 2, of the Charter of the United Nations, shall be borne by Member States. Accordingly, the Secretary-General states that requiring staff members to bear part of the costs of an "expense" of the Organization raises legal concerns and that introducing staff-funded schemes raises the possibility that, in future, other "expenses" of the Organization could be underwritten in part or in whole through a levy on staff members (ibid., paras. 3 and 4). **The Advisory Committee is concerned by the position presented by the Secretary-General with regard to legal concerns in respect of mandatory options for a staff-funded mechanism to support the Office of Staff Legal Assistance.**

71. **In connection with the options for staff-funded mechanisms to support the activities of the Office of Staff Legal Assistance presented by the Secretary-General for consideration by the General Assembly, the Advisory Committee recommends that the Secretary-General be requested to put forward a proposal for a mandatory scheme for a staff-funded mechanism.**

2. Recourse mechanisms for non-staff personnel

72. Responding to the request of the General Assembly in paragraph 55 of its resolution 65/251 for proposals for recourse mechanisms for non-staff personnel, the Secretary-General puts forward proposals for establishing expedited arbitration procedures for the resolution of disputes between the United Nations and certain categories of non-staff personnel (A/66/275, annex II). The Secretary-General states that he does not address other possible approaches to resolving disputes with non-staff personnel nor does he suggest means of resolving disputes with categories of non-staff who are not covered by the procedures outlined (see General Assembly resolution 65/251, para. 55).

73. The proposed procedures are summarized in paragraph 5 of annex II to the report of the Secretary-General. They entail a two-stage process, consisting of an informal resolution phase and an expedited arbitration proceeding, based on the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) in cases where informal resolution is not possible. Decisions of the arbitral tribunal would be issued within a specified time frame, and any compensation awarded would be limited to economic loss and be subject to a cap. With regard to costs and fees, the proposal states that regardless of the outcome of the case, each party would bear its own costs and fees and the parties would share the costs and fees of the arbitrator equally, although in exceptional circumstances the arbitrator may decide that a different allocation would be just and equitable (A/66/275, annex II, paras. 37 and 38).

74. The Secretary-General indicates that the expedited arbitration procedures would apply to consultants and other individuals engaged by the United Nations under a contract for the services of a consultant or individual contractor, or under analogous contract forms used by United Nations funds and programmes. The expedited procedures would therefore also apply to those experts on mission who are issued such contracts but not to United Nations Volunteers, officials other than Secretariat officials or other individuals not holding such contracts (ibid., para. 8).

75. The Advisory Committee notes that the proposal by the Secretary-General only covers non-staff personnel whose contracts currently provide for ad hoc arbitration

under the UNCITRAL Arbitration Rules (see A/62/294, paras. 19 and 20, and A/62/782, paras. 7-21) and, as such, would not entail an expansion of the formal system of administration of justice. **The Advisory Committee has no objection to the proposal of the Secretary-General.**

76. **The Advisory Committee has previously expressed concerns about an expansion of the scope of the internal justice system, not only because of the resource implications that such an expansion would entail, but also owing to the increased complexity it would create for judges and legal staff as a result of adding cases covered by a different body of law (see A/65/557, para. 53, and A/62/7/Add.7, paras. 14 and 15). The Committee continues to hold that view.**

3. Delegation of authority for disciplinary matters

77. In paragraphs 191 to 211 of his report (A/66/275), the Secretary-General responds to the request of the General Assembly, in paragraph 51 of resolution 65/251, for a detailed proposal for the delegation of authority for disciplinary matters. The Secretary-General recalls that, although he had originally proposed a limited delegation of authority to heads of missions and offices away from Headquarters to impose disciplinary measures (see A/63/314), he had subsequently proposed that this recommendation be put on hold as a number of prerequisites were not in place (see A/65/373 and Corr.1, paras. 139-145).

78. In his current report, the Secretary-General reviews a variety of options. With regard to partial delegation of authority to heads of missions and offices away from Headquarters to impose less serious disciplinary measures, the Secretary-General indicates that he does not see this as a viable option at this point as it would not address existing bottlenecks and would result in a duplication of effort between the field and the Office of Human Resources Management. The Secretary-General also states that it would not be advisable to implement full delegation of authority owing to the increased likelihood of inconsistent and unequal treatment of staff across the Organization. The Secretary-General indicates however that action is required to address delays in the handling of disciplinary cases, and he therefore proposes a number of short-term measures to expedite their investigation and processing (A/66/275, para. 208).

79. The proposed measures include a pilot project involving the establishment of a service base in Nairobi which would cover a cluster of missions. While the authority to impose disciplinary measures would remain with the Under-Secretary-General for Management, the Secretary-General states that he expects that the envisaged service base would shorten the time taken to handle cases from the missions covered. In addition, it is also proposed that: (a) high-priority cases would be expedited through a "fast-track" approach; (b) the authority to place staff on administrative leave with pay would be transferred from the Assistant Secretary-General for Human Resources Management to the Under-Secretary-General for Field Support; and (c) an interdepartmental working group would be set up to look at the issue.

80. Upon enquiry, the Advisory Committee was informed that the pilot project would cover the following missions: the African Union-United Nations Hybrid Operation in Darfur, the United Nations Integrated Peacebuilding Office in the Central African Republic, the United Nations Interim Security Force for Abyei, the United Nations Office to the African Union, the United Nations Political Office for Somalia and the United Nations Support Office for the African Union Mission in

Somalia. It was also informed that existing resources would be utilized; consequently, there would be no additional financial implications. The Committee was further informed that the pilot project would be in place for a two-year period and that its effectiveness would be measured against a number of benchmarks including, inter alia, the length of time taken to complete investigations and the time taken to complete a case from receipt to the closure of the disciplinary process. The results of the pilot project would be provided in a comprehensive report to be submitted by the Secretary-General to the General Assembly at its sixty-eight session (ibid., para. 209).

81. In its previous report on the administration of justice, the Advisory Committee indicated that it had no objection to the proposal of the Secretary-General to put on hold his recommendation for limited delegation of authority. The Committee recalled, however, that the intent of the proposal for such delegation of authority had been to address delays in the current centralized system and expressed the view that expeditious action was required, particularly in cases that could affect the well-being of staff and the smooth functioning of an office or mission (see A/65/557, para. 45).

82. **The Advisory Committee has no objection to the short-term measures proposed by the Secretary-General. The Committee trusts that their implementation will have a demonstrable effect on the timeliness with which disciplinary cases from field missions are processed. The Committee expects that the results of the implementation of the pilot project to test the feasibility of decentralizing elements of the system of administration of justice and the other short-term measures proposed will be submitted for consideration to the General Assembly at its sixty-eight session.**

83. With respect to the time required to process disciplinary cases, the Secretary-General indicates that the Administrative Law Section has taken an average of 11 months to close cases referred to it after 1 July 2009. This compares to the average of 17 months taken for cases to be closed between 2006 and 2008, at which time cases were considered by a Joint Disciplinary Committee panel, with the exception of cases in which dismissal was recommended (A/66/275, para 199). The Advisory Committee recalls that the delays in the processing of cases were a persistent criticism of the previous system of administration of justice. **The Advisory Committee expects that efforts will continue to be made to further reduce the time taken to process disciplinary cases and that progress in this regard will be reflected in future reports on administration of justice at the United Nations.**

4. Impact of the new system of administration of justice on staff-management relations

84. With regard to the request of the General Assembly in paragraph 54 of its resolution 65/251, the Secretary-General indicates that the Secretariat, the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF) believe it is too early to report on the impact of the new system of administration of justice on staff-management relations and on the performance of managers and staff. However, an increased emphasis on the prevention of disputes has been noted, and managers are becoming increasingly aware of the possible consequences of their actions and, as a result, are more regularly seeking advice and

guidance from the relevant legal offices prior to taking decisions (A/66/275, paras. 212-215). **The Advisory Committee welcomes these encouraging initial effects and trusts that the General Assembly will be provided with information on this matter in the context of future reports of the Secretary-General on the administration of justice at the United Nations.**

5. Cost-sharing arrangements

85. An update on the long-outstanding issue of cost-sharing arrangements is provided in paragraphs 216 and 217 of the report of the Secretary-General (A/66/275). As indicated, agreement has been reached regarding the cost-sharing of the formal system, while differences of opinion continue with respect to some elements of the integrated and decentralized ombudsman function, given that the funds and programmes are responsible for financing their own ombudsmen in the integrated office and also owing to the need for clarity on certain structural issues. Upon enquiry, the Advisory Committee was informed that the funds and programmes (UNDP, UNICEF, the United Nations Population Fund (UNFPA) and the United Nations Office for Project Services) and the Office of the United Nations High Commissioner for Refugees (UNHCR) had presented a coordinated position that the costs of the Office of the United Nations Ombudsman and Mediation Services should be excluded from the memorandum of understanding on cost-sharing pending agreement on the new terms of reference for the Office, after which amendments to the memorandum of understanding could be made. Until this occurs, the Committee was informed that a cost-sharing memorandum of understanding may be concluded on a partial basis at this time, covering only the formal system.

86. The Advisory Committee was further informed that, on a headcount basis, the prorated share of the cost of the formal system of justice between the Secretariat and the participating United Nations entities would be 58.32 per cent and 41.68 per cent, respectively. On that basis, it is expected that a reimbursement of approximately $6.8 million from the participating United Nations entities would be forthcoming for the biennium 2010-2011. The Committee recalls that the General Assembly approved the proposals of the Secretary-General for a cost-sharing arrangement (resolution 62/228, para. 62). **The Advisory Committee regrets that an agreement on a cost-sharing arrangement for the totality of the internal justice system has yet to be finalized, despite the fact that discussions on this issue began in February 2008. The Committee stresses that it is urgent that an agreement on pending issues be reached expeditiously.**

6. Training of actors in the system

87. In response to the request of the General Assembly in paragraph 61 of its resolution 65/251, information is provided in paragraphs 218 to 227 of the report of the Secretary-General (A/66/275) on the training provided to those involved in the new system of administration of justice. The Secretary-General also highlights the need for continued training activities and for ongoing outreach to staff on the informal and formal means of dispute resolution. **The Advisory Committee expects that training activities in this area will be harmonized with the Organization's overall training strategy.**

7. Other information requested by the General Assembly

88. In paragraphs 230 to 246 of his report (A/66/275), the Secretary-General provides information requested by the General Assembly in paragraph 53 of its resolution 65/251 on a range of issues, including the main issues leading to usage of the system of justice, actions taken by the Administration to address them and information on monetary compensation awarded by the Dispute Tribunal and the Appeals Tribunal.

Monetary compensation awarded by the Tribunals

89. Information on the monetary compensation awarded by the Tribunals is outlined in annex III to the report of the Secretary-General (A/66/275). During the period from 1 July 2009 to 31 May 2011, 38 judgements of the Dispute Tribunal awarded compensation equal to, or more than, six months net base salary, although a number of these were subsequently reduced or vacated by the Appeals Tribunal (ibid., annex III.C). During the period, a total of $2,642,273 was paid out in compensation based on the judgements of the Tribunals (ibid, annex III.B). Upon enquiry, the Advisory Committee was informed that the judgements overturned by the Appeals Tribunal to date had resulted in a reduction in awarded compensation of approximately $1,880,000. The Advisory Committee was further informed that the compensation paid to staff members or former staff members is charged to common staff costs in line with the practice applied historically under the former internal justice system. **The Advisory Committee is concerned at the magnitude of compensation awarded, as reflected in the information provided by the Secretary-General. The Committee emphasizes the need to ensure that individuals whose actions violate the Organization's rules and procedures and lead to a financial cost to the Organization are held accountable. The Committee requests that information on the level of compensation awarded by the Tribunals and paid out to staff members and former staff members continue to be included in future reports of the Secretary-General on the administration of justice.**

C. Issues relevant to the review by the General Assembly of the statutes of the Tribunals

90. The Secretary-General recalls that, in paragraph 46 of its resolution 65/251, the General Assembly decided to defer until its sixty-sixth session a review of the statutes of the Tribunals, in the light of experience gained, including on the efficiency of the overall functioning of the Tribunals. In section IV of his report, the Secretary-General raises a number of issues for consideration by the General Assembly in its review (A/66/275, paras. 247-293).

1. Rules of procedure of the Tribunals

91. Noting that the General Assembly will be considering the report on amendments to the rules of procedure of the Dispute Tribunal and the Appeals Tribunal (A/66/86), the Secretary-General makes a number of observations on the rules of procedure and recommends that:

(a) The General Assembly encourage the Tribunals to consult with the parties appearing before them when making amendments to their rules of procedure (A/66/275, paras. 249 and 250);

(b) The statutes of the Tribunals be amended to provide for a mechanism in their rules of procedure to dismiss expeditiously cases that are manifestly inadmissible or manifestly lacking any foundation in law (ibid., paras. 251-255);

(c) The statute of the Dispute Tribunal be revised to provide that audio recordings of oral hearings before the Tribunal be maintained and made available to the parties upon request (ibid., paras. 256-259);

(d) The statute of the Dispute Tribunal be revised so that its rules of procedure incorporate a provision concerning publication of judgements, including a procedure for the redaction of names from judgements upon the request of the individuals concerned (ibid., paras. 260-263);

(e) The statute of the Dispute Tribunal be amended to clarify that interlocutory orders issued by the Tribunal may be subject to appeal and that the statute of the Appeals Tribunal also be amended to clarify that appealing an interlocutory order of the Dispute Tribunal would have the effect of suspending the execution of the contested order (ibid., paras. 264-266);

(f) The statute of the Appeals Tribunal be amended to extend the deadline for filing appeals of Dispute Tribunal judgements from 45 days to 60 days and to establish a 30-day deadline for filing appeals of interlocutory appeals (ibid., paras. 267-269).

2. Jurisdiction of the United Nations Dispute Tribunal over acts and omissions by independent entities in connection with the performance of their operational mandates

92. The Secretary-General expresses the view that clarity is required with regard to the competence of the Dispute Tribunal over the acts and omissions of entities such as the Ombudsman, the Office of Internal Oversight Services, the Ethics Office and the Office of Administration of Justice, all of which have independent status pursuant to General Assembly resolutions. The Secretary-General indicates that this raises the question as to whether he can be held liable for acts and omissions of entities over which he has no effective control. To address this, the Secretary-General states that it may be helpful for the General Assembly to clarify its intent regarding the scope of the jurisdiction of the Dispute Tribunal, and recommends amending article 2.1 of the statute of the Dispute Tribunal to refer to "an administrative decision unilaterally taken by or on behalf of the Secretary-General that is alleged to be in non-compliance with the terms of appointment or the contract of appointment" (A/66/275, paras. 270-280).

3. Jurisdiction of the Dispute Tribunal over the implementation by the Secretary-General of decisions taken by governing bodies, such as the General Assembly or its subsidiary bodies

93. The Secretary-General further notes that applications have been filed with the Dispute Tribunal by staff members challenging actions he has taken to implement General Assembly resolutions or decisions of the International Civil Service Commission (A/66/275, paras. 281-293). The Secretary-General gives the example

of the discontinuation of the personal transitional allowance, which resulted from the decision of the General Assembly on harmonization of conditions of service in its resolution 65/248 and has been the subject of a case submitted to the Dispute Tribunal. He notes that, in another case, the Dispute Tribunal has held, in a ruling subsequently confirmed by the Appeals Tribunal, that the Secretary-General's obligation to comply with General Assembly resolutions cannot be invoked as a reason for declining to take a particular action when inaction would lead to a violation of human rights norms such as the principle of equal pay for equal work (ibid., para. 285). The Secretary-General also highlights cases submitted to the Dispute Tribunal that challenged his implementation of a decision by the International Civil Service Commission to change the classification of two duty stations, which impacted on the entitlements of staff members serving there.

94. The Secretary-General indicates that he considers that it may be helpful for the General Assembly to clarify its intent regarding the scope of the Dispute Tribunal's jurisdiction and to consider the appropriateness of imposing financial liability and expending the public funds of the Organization where the Secretary-General has taken action to implement decisions of governing bodies such as the General Assembly or the International Civil Service Commission (ibid., para. 291). The Secretary-General indicates that, should the Assembly wish to clarify that the scope of the Tribunal's jurisdiction would not extend to the implementation by the Secretary-General of decisions by such bodies, amending article 2.1 of the statute of the Dispute Tribunal in the manner outlined in paragraph 92 above would have that effect, since actions to implement decisions of those bodies would not constitute administrative decisions which were unilaterally taken by the Secretary-General.

95. **The Advisory Committee is of the view that, where necessary, the new system of administration of justice should be adjusted to ensure that it is implemented in a manner which is in the best interest of the Organization and remains consistent with its governing principles. The Committee further recalls paragraph 9 of General Assembly resolution 65/251, in which the Assembly stressed that all elements of the system must work in accordance with the Charter of the United Nations and the legal and regulatory framework established by the Assembly. The Committee sees merit in the recommendations of the Secretary-General and is of the view that they should be given due consideration by the Assembly during its review of the statutes of the Tribunals.**

96. In this regard, the Advisory Committee notes that the General Assembly decided that the consideration of the outstanding legal issues related to the administration of justice at the United Nations would be continued during its sixty-sixth session in the framework of a working group of the Sixth Committee, taking into account the deliberations of the Fifth and Sixth Committees, previous decisions of the Assembly and any further decisions the Assembly may take during its sixty-fifth session (decision 65/513).

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

97. The report of the Secretary-General (A/66/224), which covers the period from 1 January to 31 December 2010, is the third report on the integrated Office of the United Nations Ombudsman and Mediation Services. The Office provides conflict

resolution services to staff of the Secretariat, UNDP, UNFPA, UNICEF, the United Nations Office for Project Services and UNHCR.

A. Establishment of regional offices

98. The Secretary-General highlights the establishment in 2010 of the seven regional branches of the Office of the United Nations Ombudsman and Mediation Services in Bangkok, Geneva, Nairobi, Santiago, Vienna and in peacekeeping missions in the Democratic Republic of the Congo and the Sudan (A/66/224, paras. 14-30). The Secretary-General indicates that this decentralization has provided necessary access to staff in the locations covered and has enabled the Office to provide in-person intervention at the field level. The Secretary-General states that the establishment of the regional branches had facilitated breakthroughs in several conflict and dispute resolution cases and had also assisted the Office in its outreach and advocacy efforts. Their establishment is also stated to have helped develop knowledge about the specific conditions and requirements in the various regions and provided a deeper understanding of cultural traditions and sensitivities, which can impact on the working environment, particularly in missions. **The Advisory Committee welcomes the establishment of the regional branches of the Office of the United Nations Ombudsman and Mediation Services and their initial positive impact. The Committee expects that their presence will increasingly facilitate harmonious working relations in the offices and missions covered.**

B. Implementation of incentives for informal resolution

99. In his report (A/66/224), the Secretary-General recalls paragraph 22 of General Assembly resolution 65/251, in which the Assembly recalled the recommendations contained in the report of the Secretary-General (A/65/303) that were intended to encourage recourse to informal resolution and requested the Secretary-General to ensure full implementation of those recommendations that were readily implementable and did not require additional resources or amendments to the Staff Regulations and Rules, and to include all other recommendations in his proposed programme budget for the biennium 2012-2013. An update on efforts to implement these incentives is provided in paragraphs 33 to 37 of the report of the Secretary-General.

100. The Secretary-General highlights a number of initiatives that have been undertaken, including: (a) the issuance of directives by the Under-Secretary-General for Management emphasizing the benefits of informal dispute resolution and urging managers to respond in a timely manner to requests from the Office of the United Nations Ombudsman and Mediation Services for information; (b) the provision of training on dispute resolution to other elements of the system of administration of justice and to other staff; (c) the preparation of feedback reports by the Office for selected departments highlighting systemic issues in their areas; and (d) the participation of the Ombudsman in the Management Performance Board, the Management Committee and the Staff-Management Coordination Committee. In addition, the Secretary-General indicates that informal resolution has been included as an element of effective leadership in his compacts with senior managers. **The Advisory Committee welcomes the actions taken to date to encourage the**

informal resolution of disputes. The Committee encourages continued efforts in this regard.

C. Systemic issues

101. Section II of the report of the Secretary-General (A/66/224) provides information on systemic issues identified in all the entities that the Office of the United Nations Ombudsman and Mediation Services serves. The report provides information on issues related to: (a) job and career; (b) evaluative and peer and colleague relationships; (c) compensation and benefits/service and administration; (d) legal, regulatory, financial and compliance matters; (e) organizational, leadership and management matters; and (f) safety, health, well-being, stress and work/life matters (ibid., paras. 56-92). The report indicates that during 2010, as in 2009, the categories in which most cases were brought to the attention of the Office were job and career (34 per cent), evaluative (supervisory) relationships (20 per cent), compensation and benefits (15 per cent) and legal, regulatory, financial and compliance issues (8 per cent) (ibid., para. 58). The report of the Secretary-General provides additional information on the types of concerns raised within each of the categories and makes several recommendations on how these could be addressed.

102. The Advisory Committee notes the recommendations made by the Office of the United Nations Ombudsman and Mediation Services to address the systemic and cross-cutting issues brought to its attention during the reporting period. The Committee has previously highlighted the need for such issues, which have been identified as the root cause of many workplace disputes and litigation, to be addressed in a timely manner (see A/65/557, para. 62). **The Advisory Committee expects that the recommendations made by the Ombudsman will be given full consideration by the Secretary-General. The Committee requests that information on the specific measures taken be included in the next report of the Secretary-General on actions taken to address the findings of the Ombudsman on systemic issues.**

D. Statistical information

103. In terms of caseload, the report of the Secretary-General indicates that during 2010 the number of requests from staff to the Office of the United Nations Ombudsman and Mediation Services reached 1,764, representing a 35 per cent increase when compared with the 1,287 cases registered in 2009 (A/66/224, para. 93). The majority of cases (1,206) were from the Secretariat, while 418 were registered from the funds and programmes and 140 from UNHCR. The number of Secretariat cases represented an increase of 70 per cent compared to 2009, mainly attributed to the functioning of the regional branches, which opened 725 cases during the year.

104. The report of the Secretary-General highlights the fact that the level of complexity of cases varies considerably, and one case may involve multiple issues which require interaction with a number of different stakeholders. As such, the Secretary-General indicates that the time taken to resolve a case generally ranges from two weeks to three months (ibid., paras. 94-96). The Advisory Committee was informed, upon enquiry, that the caseload reported did not include one-time contacts

made by staff to the Office for advice or guidance which did not involve research, meetings or other extensive contacts. **The Advisory Committee recognizes that the time and effort required by the Office of the United Nations Ombudsman and Mediation Services to address individual cases may vary greatly. The Committee urges continued efforts by the Office to determine how best to describe and report on its workload.**

105. The Advisory Committee was informed, upon enquiry, that the Office had conducted an analysis of cases received during the first year of the new system of administration of justice which found that only 21 per cent of cases had subsequently been taken to the Dispute Tribunal by staff. **The Advisory Committee remains of the view that the informal process plays an important role in the resolution of disputes and, by extension, in avoiding unnecessary recourse to litigation. The Committee notes the information provided on the number of cases handled by the Office of the United Nations Ombudsman and Mediation Services which were not subsequently the subject of litigation. The Committee considers this to be an important indicator of the effectiveness of the Office and requests that this information be provided in future reports on the activities of the Office.**

106. Information with regard to the caseload of the Mediation Service for the period from 1 July 2009 to 31 December 2010 is provided in section IV of the report of the Secretary-General (ibid., paras. 117-124). The Secretary-General indicates that the Mediation Service opened 62 cases during that period, of which 28 were mediated. Of the cases mediated, 21 (75 per cent) were successfully resolved while 7 (25 per cent) did not reach a successful resolution. The Secretary-General states, however, that a number of cases opened by the Mediation Service were not mediated because one or both parties chose not to do so following a preliminary consultation. At the end of 2010, 13 cases were still ongoing (ibid., para. 118).

E. Terms of reference

107. With regard to the revised terms of reference for the integrated Office, the Secretary-General indicates that while the draft terms of reference had been submitted for promulgation in a Secretary-General's bulletin in 2010, further review and consultations were required following the adoption of General Assembly resolution 65/251 (ibid., para. 5). The Advisory Committee recalls that the Assembly had requested the Secretary-General to report to it on the revised terms of reference at its sixty-third session (see resolution 62/228, para. 67 (a)).

108. Upon enquiry, the Advisory Committee was informed that discussions were still ongoing with funds and programmes (UNDP, UNFPA, UNICEF and the United Nations Office for Project Services) and UNHCR on the revised terms of reference and that a number of issues, including the level and type of integration, oversight, responsibilities and accountability lines of the integrated Office, had yet to be agreed upon. Those entities had also presented a coordinated position that the costs of the Office should be excluded from the memorandum of understanding on cost-sharing until agreement was reached on the new terms of reference for the Office. **The Advisory Committee regrets that the revised terms of reference have yet to be finalized and notes that the continued failure to do so is delaying agreement on cost-sharing arrangements for the new system of administration of justice**

(see also paras. 85 and 86 above). The Committee urges the timely completion and promulgation of the revised terms of reference for the Ombudsman.

F. External review

109. The Secretary-General states that the Office is looking at the possibility of a review by external experts to monitor and assess the substantive performance and systemic impact of the Office. The review would be carried out by a panel of experts who would also identify lessons learned and present recommendations on how the quality of services provided by the Office could be improved (A/66/224, paras. 4 and 128). **The Advisory Committee has consistently emphasized the importance of regular monitoring and evaluation of activities to determine the relevance, efficiency, effectiveness and impact of the work of departments and offices. The Committee notes the intention to conduct an external review of the activities of the Office of the United Nations Ombudsman and Mediation Services and looks forward to considering its findings. The Committee will revisit its position on the structure and staffing of the Office following its consideration of the results of that review.**

G. Resource requirements

110. The Secretary-General states that the changing structure of the Office of the United Nations Ombudsman and Mediation Services, notably the decentralization through the creation of the seven regional branches, has placed increased demands on the Office. In addition, he states that the Office is increasingly involved with promoting conflict prevention at Headquarters and in the field, which has increased the level of coordination required with various stakeholders throughout the Organization (A/66/224, para. 136). The Secretary-General further states that those changes have created gaps and, as such, two new posts are proposed as follows: (a) an Administrative Officer (P-4) to assist the Director of the Office in the area of human and financial management; and (b) a Special Assistant (P-4) to support the Ombudsman in strategic and operational planning, as well as policy coordination and information management. **The Advisory Committee recognizes that the expansion of the Office of the United Nations Ombudsman and Mediation Services, including the establishment of the regional offices, has resulted in additional managerial and administrative workload. While the Committee is of the view that additional support is required for the Office, it is not felt that the level of activity, particularly in the area of the management of human and financial resources, merits the addition of two new Professional posts. The Committee therefore recommends approval of one new P-4 post for the Office to carry out the functions outlined in paragraph 137 of the report of the Secretary-General.**

111. With regard to non-post resources, additional travel resources in the amount of $180,000 are sought to facilitate, inter alia, in-person intervention to resolve disputes and the conduct of conflict coaching in duty stations with no ombudsman presence and to enable the travel of regional ombudsmen. The provision would also be used to establish the critical ombudsman response team mechanism intended to facilitate a quick intervention when required and also to fund an annual retreat for all staff of the Office (ibid., para. 138). The Committee recalls that $87,400 in travel

funds have been requested for the Office in the context of the proposed programme budget for the biennium 2012-2013 (A/66/6 (Sect. 1)). **Given the continuous interaction among staff of the Office, the Advisory Committee considers that holding a retreat on a biennial basis would be sufficient. In addition, the Committee is of the view that when an office or mission requires the intervention of the Office of the United Nations Ombudsman and Mediation Services on an immediate basis, it should be able to fund such priority travel. Taking these factors into account, the Committee recommends approval of an additional $90,000 in travel funds for the Office.**

112. Additional resources are also sought for training activities ($150,000). Upon enquiry, the Advisory Committee was informed that the provision included funds for the training of stakeholders and staff of the administration of justice system ($70,000), and fees to fund the attendance of staff at conferences related to dispute resolution ($30,000) and to fund training undertaken by staff of the Office ($50,000). The Advisory Committee recalls that resources for the development and upgrading of skills of staff are provided to the Office of Human Resources Management for allocation on the basis of needs assessments submitted by departments and offices (see A/66/6 (Sect. 29C), para. 29C.35 (e)). **Taking this into account, the Advisory Committee recommends approval of an additional $100,000 in training funds for the Office of the United Nations Ombudsman and Mediation Services.**

H. Recommendations and conclusions

113. The actions to be taken by the General Assembly in connection with the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services are indicated in paragraph 142 of the report (A/66/224). The General Assembly is requested to appropriate a total amount of $918,400 (before recosting), with the provision representing a charge against the contingency fund, and to establish two new P-4 posts, effective 1 January 2012.

114. **The recommendations of the Advisory Committee on the proposals of the Secretary-General with respect to the Office of the United Nations Ombudsman and Mediation Services are contained in paragraphs 110 to 112 above. The overall provision for non-post costs should be adjusted to reflect the position of the Committee with respect to the proposals for new posts.**